IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 38 OF 2004

State
through Public Prosecutor,
High Court of Bombay at
Panaji, Panaji. ... Appellant

versus

1. Surya Jalmi s/o Sankar Jalmi,
   r/o Talewada, Pali,

2. Vinayak Jalmi s/o Shankar Jalmi,
   r/o Talewada, Pali,

3. Vasant Jalmi s/o Shankar Jalmi,
   r/o Talewada, Pali,

4. Durgadas Jalmi s/o Surya Jalmi
   r/o Talewada, Pali,

5. Devidas Gawade s/o Vinayak
   Gawade, r/o Talewada, Pali,

6. Anand Jalmi s/o Tatu Jalmi
   r/o Talewada Pali,

7. Mahadev Jalmi s/o Tatu Jalmi,
   r/o Talewada Pali,

8. Narayan Gawade s/o Sagun
   Gawade, r/o Talewada, Narava,

9. Ratnakar Gawade s/o Rama
   Gawade, r/o Talewada Pali,

10. Rohidas Talekar s/o Gunu
Talekar, r/o Ambegal Pali,

11. Tukaram Talekar s/o Gunu
Talekar, r/o Talewada, Pali,

12. Rama Jalmi s/o Tatu Jalmi,
r/o Talewada Pali,

13. Vithu Talekar s/o Gunu
Talekar, r/o Talewada Pali. ... Respondents

Ms. W. Coutinho, Public Prosecutor for the Appellant.

Mr. Ryan Menezes, Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 18TH AUGUST, 2006.

ORAL JUDGMENT

Heard the learned Public Prosecutor Ms. W. Coutinho on behalf of the appellant/State and Mr. Ryan Menezes, the learned Counsel on behalf of the respondents/accused.

2. This is State's appeal against the acquittal of the accused under Sections 143, 147, 148, 323, 325, 427, 504 r/w 149 I.P.C., by Order dated 18-3-2004 of the learned J.M.F.C., Bicholim.

3. The case of the prosecution was that on or about 22-4-2002 at about 21.30 hours at Talewada, Pale the accused i.e. A-1 to B-3 in furtherance of common object formed an unlawful assembly and abused with filthy words and assaulted Krishna/PW3 and his wife, son and two daughters and other family members with wooden dandas, stones and broken soda bottles causing grievous injuries to the said Krishna/PW3 and simple injuries to other persons and also caused damage to the roof tiles, T.V. and other household articles in the tune of Rs.20,000/- approximately.

4. To support the charge, the prosecution examined 11 witnesses. The Medical Officer was examined twice and the Investigation Officer was examined as PW12. Initially, the chargesheet was filed against 12 accused i.e. A-1 to B-3. When the Investigation Officer/PW12 was cross-examined, he admitted that he had not filed the chargesheet against Vithu Talekar/B-4 as a result, the learned J.M.F.C. invoked her powers under Section 319 of the Code of Criminal Procedure, 1973 and added him as an accused in the trial and on or about 25-9-2003 framed a charge against him to which he pleaded not guilty. However,

the records do not show that the said Vithu Talekar/B-4 was ever given any opportunity to cross-examine the prosecution witnesses, earlier examined in the trial of the accused.

5. If initially 12 accused were prosecuted namely A-1 to B-3, the prosecution examined 12 witnesses to support the charge. There is no dispute that except the Medical Officer(who was examined twice as PW10 and PW11) and the Investigating Officer/PW12, the remaining prosecution witnesses belong to one group in the village while the accused belong to another group and in between both the said groups there had been strained relationship on account of the gambling activities held during the dramas arranged by the group of the accused which some members of the group of the prosecution witnesses wanted to stop and regarding which they had filed a complaint to the Police. There were also differences among both the groups in connection with "padukas" of one religious baba from Maharashtra which were brought and kept in the temple and which the group of the prosecution witnesses wanted them to be removed.

6. The learned J.M.F.C. after considering the evidence produced came to the conclusion that there were inter se differences in the testimonies of all the prosecution witnesses and there were also major contradictions and omissions in the testimonies of the said witnesses which went to the root of the case and the benefit of which had to be given to the accused. The learned J.M.F.C. also noted that the testimonies of the prosecution witnesses were not corroborated by each other and there were differences between the ocular evidence and the medical evidence. The learned J.M.F.C. also observed that if according to the prosecution witnesses the accused had thrown soda bottles and stones on them and on the house of Krishna/PW3 only one soda bottle and two stones would not have been found when the scene of panchanama was done by the Investigating Officer. The learned J.M.F.C. therefore concluded that the witnesses examined by the prosecution were all interested witnesses which created a doubt as regards the evidence given by them. The learned J.M.F.C. also noted that none of the witnesses had described their abusive words except Krishna/PW3 and he stood contradicted.

7. Be that as it may, it appears that there was a stone throwing incident at about 9.30 p.m. on 22-4-2002 due to which some of the prosecution witnesses got injured and a T.V. from the house of Krishna/PW3 was damaged. It is out of this incident that the case came to be filed against the accused with the allegations as aforesaid. This is evident from the fact that Krishna/PW3 stated that on account of the darkness he could not identify which of the accused were having dandas in their hands. Likewise, Pradeep/PW1 stated that he could not see the weapons as there was a confusion on account of the commotion.

8. As per the case of the prosecution the incident took place at a time when Krishna/PW3 was in their courtyard which had a palm leaves shelter/matov, and, at that time Krishna/PW3 was along with his wife Radha, who has not been examined, daughter Sharmila/PW8, son Vinod/PW9, daughter/ Shubhangi and son/Gurudas who have not been examined. As per Krishna/PW3 and Sharmila/PW8 the incident started with Mahadev Jalmi/A-7 when the latter came as they were sitting and abused them with filthy words which have been described by Krishna/PW3 but not by Sharmila/PW8, which words she stated

that she did not remember. Apparently, Jalmi/A-7 was drunk at that time, as per Krishna/PW3 but Sharmila/PW8 is silent about the same. Pradeep/PW1 is the brother of Krishna/PW3 and it is doubtful whether he was at all present at the time of incident. I say so because the houses of Krishna/PW3 and Pradeep/PW1 are not in the same ward and the house of Pradeep/PW1 is at a distance of about 200 meters or so requiring a time of about 7 minutes to go to his house from the house of Krishna/PW3. In fact, Krishna/PW3 was hesitant in his cross-examination to say that Pradeep/PW1 too was present at the time of incident. Krishna/PW3 was confronted with his statement to the Police wherein he had not stated that the incident had started with Jalmi/A-7 coming and abusing them. If as per Krishna/PW3 and Sharmila/PW8 the incident started with the said Jalmi/A-7 giving bad words, as per Pradeep/PW1 as well as Krishna/PW3 all the accused came together and started the assault. As per Pradeep/PW1 all the accused came to the spot and there were shouts on account of the assault on Ramnath/PW5 by Rama/B-3. Pradeep/PW1 stated that all the accused then assaulted his brother Krishna/PW3, his brother's wife Radha, daughters Shubhangi and Sharmila and son Vinod with the help of bottles

and dandas. According to him, Ankush/PW6, Rupesh/PW7 and Gajanan came to their rescue. However, as per Krishna/PW3 all the accused(except A-7 and B-4) came towards the shop armed with dandas and assaulted them. Vasant/A-3 and Vinayak/A-2 assaulted his wife Radha with a danda on the leg. According to him, Ramnath/PW5 was already present before the arrival of the accused.

9. If Sharmila/PW8 stated that Vithu Talekar/B-4 assaulted her on her left leg, at the time when she deposed the said Vithu/B-4 was not an accused before the Court and, as already stated when he was added subsequently, no opportunity was provided to him to cross-examine Sharmila/PW8. It is interesting to note that if Sharmila/PW8 alleged an injury on her left leg, Dr. Karpe found a soft tissue injury on the left forearm and therefore it is obvious that Sharmila/PW8 was not speaking the truth. If Krishna/PW3 stated that he had also received an injury on his chest on account of pelting of the stone by Vasant/A-3, there was no corresponding injury found on him by Dr. Karpe. None of the other witnesses examined supported the statement of Krishna/PW3 that the injuries were caused to him

either by Vinayak/A-2 or Vasant/A-3 and so also is the case with other witnesses. On behalf of the accused, it is submitted, and in my view rightly, that the evidence of the prosecution is replete with contradictions inter se but also in relation to the previous statement recorded of the said witnesses by the Police. As already stated Krishna/PW3 as well as Pradeep/PW1 have only made general statements regarding the assault by the accused and there is not even minimum corroboration available as to find out as to how the incident began i.e. the genesis of the incident and as already stated it is quite probable that the incident is one of stone throwing, probably from the road adjacent to the house of Krishna/PW3 on account of which the complaint came to be filed and the accused prosecuted as aforesaid. The view taken by the learned J.M.F.C. was the only view which could be taken from the evidence produced. The acquittal of the accused was fully justified in the absence of convincing corroborative evidence. No case is made out for interference. Hence, the appeal is hereby dismissed with no order as to costs.

N. A. BRITTO, J.

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